FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

C.A.NO.3719/2007 AND 3718/2007 IN F.A.NO.2024 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.J.N.Pawar for the Applicant.

CORAM: A.S.OKA, J.
DATE : 21ST SEPTEMBER, 2007

P.C.

1. Heard learned Advocate for the applicant. The applicant is the respondent in the First Appeal and the original plaintiff. There is a money decree in favour of the applicant in the sum of Rs.2,17,308/- with interest. The appeal was admitted and in the Civil Application for stay being C.A.No.3674/2006 this court granted conditional stay on deposit of the entire decretal amount within a period of three months from today. This court observed that if compliance is not made within stipulated time, interim relief will stand vacated. The contention of the applicant in this application is that the entire decretal amount has not been deposited by the respondent-appellant with the Trial Court and only principal amount has been deposited. Prayer in this application is for

vacating the interim stay.

2. Civil Application No.3718 of 2007 is for seeking permission to withdraw the amount deposited by the respondent.

3. Office noting shows that a copy of this application has been served to the respondent in the Civil Application (Appellant in the appeal).The appearance of the Advocate for the appellant is shown on the cause list. The order dated 29.1.2007 passed in Civil Application No.3674 of 2006 is a self operative order. If entire decretal amount is not deposited, the interim relief was to stand vacated. It is for the Trial Court to determine whether the entire decretal amount payable has been deposited by the respondent in terms of order dated 29th January,2007. The Trial Court will decide after hearing parties as to whether a compliance has been made with the order dated 29th January, 2007 in C.A.No.3674 of 2006. If compliance is not made, obviously the interim stay will stand vacated. In such event, the applicant will be entitled to withdraw the amount without by furnishing security. However, if the Trial

Court finds that a compliance has been made by the respondent with order dated 29th January, 2007, the Trial Court will permit the applicant in this application to withdraw the decretal amount on furnishing adequate security for the decretal amount to the satisfaction of the said Court.

4. Hence, Civil Applications are disposed by passing the following order.

ORDER

1. The Trial Court will decide whether the respondent in the applications have made compliance of the order dated 29th January, 2007. If it is found that the compliance has not been made, the stay granted by order dated 29th January,2007 will stand vacated. In such event, the applicant will be entitled to unconditionally withdraw the amount deposited by the respondent. However, the withdrawal will be subject to final outcome of the First Appeal.

2. If the Trial Court finds that compliance has been made as per order dated 29th

January,2007, the applicant will be entitled to withdraw the decretal amount on furnishing adequate security to the satisfaction of the Trial Court. Civil Applications are disposed of.

(A.S. OKA,J.)